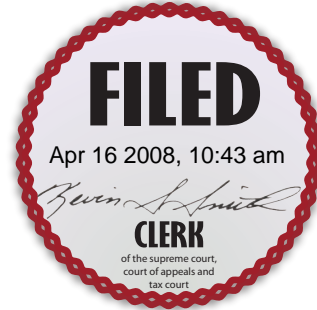


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP OF )  
A.C., Minor Child, and S.F. and A.K., Parents, )

S.F., Mother, )

Appellant-Respondent, )

vs. )

No. 64A05-0711-JV-628

PORTER COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner, )

COURT APPOINTED SPECIAL ADVOCATE )  
PROGRAM OF PORTER COUNTY, )

Appellee. )

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APPEAL FROM THE PORTER CIRCUIT COURT  
The Honorable Mary R. Harper, Judge  
The Honorable Edward J. Nemeth, Magistrate  
Cause No. 64C01-0605-JT-541

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**April 16, 2008**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**DARDEN, Judge**

### STATEMENT OF THE CASE

S.F. (“Mother”) appeals the termination of her parental rights as to her daughter, A.C.

We affirm.

### ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

### FACTS

A.C. was born on August 27, 2001. A.K. (“Father”) is A.C.’s Father.<sup>1</sup> Mother and Father, however, are not married.

On April 28, 2004, Mother and A.C. were visiting the home of a friend of Mother’s when officers from the Portage Police Department responded to a report that drugs were being used in the home. When they arrived, the officers discovered drug paraphernalia in the home, and the homeowner reported that “his girlfriend and some of her friends had used all of their drugs . . . .” (Tr. 84). The officers arrested Mother for possession of paraphernalia and visiting a common nuisance. Mother later admitted to smoking marijuana and having had a history of drug use.

Due to Mother’s arrest, Melissa Johnson, a family case manager for Porter County Office of Family and Children (the “OFC”) filed a petition for emergency detention and

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<sup>1</sup> The juvenile court also terminated Father’s parental rights, but he is not part of this appeal.

placed A.C. in Father's custody. A.C. remained in Father's care until June 3, 2004, when the OFC removed A.C. from Father's home after his urine tested positive for marijuana. The OFC therefore placed A.C. in foster care.

On or about May 25, 2004, the OFC filed a petition, alleging A.C. to be a child in need of services ("CHINS") pursuant to Indiana Code section 31-34-1-1.<sup>2</sup> On or about June 21, 2004, Mother and Father admitted the allegations of the CHINS petition. The juvenile court determined A.C. to be a CHINS and set a disposition hearing for July 6, 2004.

On July 6, 2004, the trial court held the disposition hearing and entered a participation decree. Among other things, the juvenile court ordered Mother and Father to do the following: (1) submit to random drug screens; (2) submit to a substance abuse evaluation and follow through with the recommendations; (3) participate in individual counseling; and (4) complete parent nurturing classes.

Mother participated in visitation with A.C. and received counseling from Dawn Johnson, a mental health therapist. Mother also enrolled in parenting classes on May 1, 2006. Mother did not complete the first series of parenting classes, and therefore, re-enrolled in the classes in January of 2007. Mother also enrolled in an intensive outpatient

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<sup>2</sup> Indiana Code section 31-34-1-1 provides as follows:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

program (“IOP”) to address her drug use. Despite completing the IOP, Mother continued to abuse drugs. Thus, Mother voluntarily re-enrolled in and completed IOP. After a series of negative drug tests, the OFC placed A.C. back in Mother’s care on November 10, 2005. The OFC continued to provide services to Mother, including counseling.

In April of 2006, Mother and A.C. arrived at a counseling session. Mother appeared lethargic and confused. The counselor therefore telephoned Richard Wadsworth, a family case manager, who met with Mother. Mother admitted to Wadsworth that she had taken Xanax, which had not been prescribed for her. Due to Mother’s drug use, the OFC placed A.C. in her previous foster home.

On May 22, 2006, the OFC filed a petition to terminate the parental rights of Mother and Father, asserting, among other things, that Mother “continue[d] to have a substance abuse problem that inhibits her ability to properly care for [A.C.]” (Mother’s App. 33). The juvenile court commenced its hearing on the OFC’s petition on March 1, 2007.

During the hearing, the juvenile court admitted into evidence results of Mother’s hair follicle tests, conducted on November 21, 2006 and February 6, 2007. Both tests detected cocaine in the samples. Wadsworth testified that a positive hair follicle test indicates drug usage “within the last 60 days.” (Tr. 127). Mother’s therapist testified that “when things start getting difficult,” Mother “revert[s] back to the old pattern of behavior of using drugs . . . .” (Tr. 62).

Mother admitted during the hearing that after the OFC placed A.C. in foster care in April of 2006, she went on a “seven-month [drug] binge.” (Tr. 218). Mother,

however, denied using drugs subsequent to September 13, 2006, and testified that she again sought counseling for her drug use in November of 2006.

On August 16, 2007, the juvenile court ordered the termination of Mother's parental rights. The juvenile court found, in pertinent part, as follows:

3. The [OFC's] first contact with the family came April 28, 2004, when Mother was arrested for visiting a common nuisance and possession of paraphernalia. . . . Mother admitted to Family Case Manager Melissa Johnson . . . that she had a substance abuse problem and needed help.

4. . . . [A.C.] remained in foster care placement from June 3, 2004, until November 10, 2005, at which time she was placed back in the care of Mother. However, this reunification attempt only lasted until April 28, 2006, at which time Mother came to a therapy session under the influence of drugs and [A.C.] was again removed from her care and placed back in foster care. [A.C.] has remained in such foster care placement from that time until the present.

\* \* \*

7. The Court finds that following [A.C.]'s being removed from Mother's care for a second time because of Mother's inability to refrain from doing drugs, Mother went on a seven month drug binge. During this period, Mother submitted to a drug screen, which came up positive for cocaine on May 26, 2006.

\* \* \*

12. The Court further finds that on November 21, 2006, Mother failed a hair follicle test once again testing positive for cocaine, as well as for benzoylecgonine. On February 6, 2007, just one month prior to the hearing on termination of parental rights, Mother once again tested positive for cocaine and benzoylecgonine, after another hair follicle test. Mother has completed the programs and services ordered her by the Court, and even seemed to go above and beyond, yet she continues to test positive for drugs.

13. The Court finds by clear and convincing evidence that Mother has a serious drug problem, and although she has had intermittent periods of apparent sobriety, in the end she continues to succumb to the same types of

behaviors. Mother is currently enrolled in a drug program called Fresh Start in Lake County, Indiana.

(Mother's App. 8-15). The trial court then concluded, in pertinent part, as follows:

2. That there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied, and that the continuation of the parent-child relationship poses a threat to the well-being of the child. . . . The reasons for the child's continued placement outside the home are that Mother continues to have a substance abuse problem . . . . Mother continues to succumb to drug use, as is evidence from her multiple positive drug screens since the initial removal. Based on her past behaviors, and recent behaviors, the Court sees no reason to believe that Mother will not suffer yet another relapse in the future. Mother's participation in yet another substance abuse program is admirable, but if her history is any guide, will be futile. Mother has already completed an IOP program twice, and still she continues to submit positive drug screens . . . . Mother's continued positive drug screens and behavior, even after completing all Court ordered services, provide clear and convincing evidence that her pattern of harmful behavior continues . . . . Mother's repeated and habitual patterns of behavior . . . are clear and convincing evidence that there is a reasonable probability that the reasons for placement outside the home of the parents will not be remedied . . . .

(Mother's App. 16-20).

### DECISION

Mother asserts that the trial court erred in terminating her parental rights. Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *cert. denied*, 534 U.S. 1161 (2002). When a county office of family

and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720. In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Mother asserts that "there was insufficient evidence to show that the conditions that necessitated removal of her daughter would not be remedied . . . ." Mother's Br. 4. The trial court need only find either that the conditions resulting in a child's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. In determining whether the conditions will not be remedied, the trial court "first should determine what conditions led the State to place the child outside the home and with foster care, and second whether there is a reasonable probability that those conditions will be remedied." *Id.* The juvenile court should judge a parent's fitness to care for the child

as of the time of the termination hearing and take into account any evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). “The trial court must also evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Id.* The trial court may consider the services offered to the parent and the parent’s response to those services. *Id.*

In this case, the OFC removed A.C. from Mother’s care due to Mother’s drug-related arrest and subsequent admission to using illegal drugs. The OFC offered, and Mother took advantage of, several services, including parenting classes, counseling and treatment for drug use. Mother maintained sobriety for a certain period of time, leading the OFC to place A.C. back into Mother’s care in November of 2005. Five months later, however, Mother relapsed, leading to a prolonged period of drug use.

Although Mother testified that she stopped using drugs in September of 2006, her test results indicate that she had ingested cocaine within three months of the termination hearing. Given the evidence, we cannot say that the juvenile court committed clear error when it found that there is a reasonable probability that the conditions leading to A.C.’s removal from Mother will not be remedied.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.